

STATE OF MICHIGAN
COURT OF APPEALS

In re J. J. BILLS, Minor.

UNPUBLISHED
February 10, 2015

No. 322233
Oscoda Circuit Court
Family Division
LC No. 12-000554-NA

Before: MURPHY, P.J., and METER and SERVITTO, JJ.

PER CURIAM.

Respondent appeals as of right from an order of the circuit court terminating her parental rights to her minor daughter pursuant to MCL 712A.19b(3)(c)(i) (failure to rectify conditions leading to adjudication), (c)(ii) (failure to rectify other conditions), and (g) (failure to provide proper care or custody). We affirm.

I. BACKGROUND FACTS

In October 2012, respondent's infant son was hospitalized at the University of Michigan Medical Center, where staff discovered retinal and brain hemorrhaging and rib fractures in various stages of healing. The infant died a few days later. Respondent's husband admitted to shaking and abusing the infant. Thereafter, petitioner sought to remove respondent's daughter and place her in protective custody. The petition filed alleged that respondent could not care for the child due to her emotional instability. At the emergency removal hearing, Child Protective Services (CPS) worker Tim Jensen testified that when he interviewed respondent, she "totally disregard[ed] the heinous things that [her husband] had done" to her infant son, even when she was presented with medical evidence and her husband's confession. The court ordered that the child at issue here be removed. At a subsequent hearing, respondent entered a plea admitting that her current emotional stress rendered her unable to care for her daughter. Respondent's psychological evaluation indicated that respondent continued to function as an adolescent and that she needed to "demonstrate greater follow-through, emotional organization, and maturity" before she could be trusted with greater responsibility over her daughter.

At a November 2012 review hearing, a caseworker testified that respondent was continuing to associate with her husband. At an April 2013 review hearing, it was reported that respondent missed 4 to 5 parenting-time visits, refused to come to the hospital when her daughter broke her collarbone, and in the prior month tested positive for morphine and hydromorphone. There was also testimony that respondent had unstable employment and had moved in with a

new boyfriend, who had a criminal history, including a conviction for substance abuse in the past three years. At a June 2013 hearing, it was reported that respondent had obtained employment. However, she was still living with the new boyfriend and had failed six drug screens, testing positive for hydrocodone, hydromorphone, morphine, marijuana, amphetamine, oxycodone, and Xanax. The trial court ordered all parenting time to cease pending respondent's ability to successfully pass a drug screen.

At a hearing held in September 2013, the court heard testimony that respondent was unemployed and had tested positive for illegal drug use two additional times. There was also evidence that respondent was arrested for illegal possession of methadone and heroin in July 2013 and was in jail until August 7, 2013. Following the hearing, the court granted petitioner's request to file a petition to terminate parental rights. Petitioner filed its petition in early October 2013. Three weeks later, the court recommended the parties submit to alternative dispute resolution. After mediation, the parties agreed that respondent would have 90 days to fulfill or substantially fulfill the requirements of the parent-agency treatment plan.

At a hearing on February 25, 2014, 90 days after mediation, there was testimony that respondent had successfully passed three random drug screens since the last hearing. However, respondent had not provided any proof that she consistently attended her substance abuse program or that she was employed. She had also moved in with a new boyfriend who, like her previous boyfriend, had a criminal history. The court ordered that all parenting time cease and granted petitioner's request to refile the petition to terminate parental rights.

At the termination hearing on May 2, 2014, respondent's therapist testified that respondent stopped attending counseling in May or June of 2013. The therapist reported that respondent was never able to overcome her anxiety and depression. A foster-care caseworker testified that respondent was unable to maintain consistent or stable employment, had failed to follow through on medical treatment and attending appointments for her daughter, had failed 17 of 27 drug screens administered between April 30, 2013, and October 9, 2013, and had stopped consistently exercising parenting-time visits in the summer of 2013 when she began using illegal drugs. Respondent had also not obtained appropriate housing. When asked whether she was ready to provide care for her daughter, respondent stated, "I would say my employment, my income is definitely questionable."

Following the hearing, the trial court terminated respondent's parental rights pursuant to MCL 712A.19b(3)(c)(i), (c)(ii), and (g). Respondent argues that the court erred in finding both that the statutory grounds for termination had been established and that termination was in the best interests of the child.

II. STATUTORY GROUNDS

We review for clear error a trial court's finding that a statutory ground for termination has been proven by clear and convincing evidence. MCR 3.977(K); *In re BZ*, 264 Mich App 286, 296; 690 NW2d 505 (2004). A trial court's factual findings are clearly erroneous if this Court is definitely and firmly convinced that the lower court made a mistake. *In re White*, 303 Mich App 701, 709-710; 846 NW2d 61 (2014).

A court may terminate parental rights pursuant to MCL 712A.19b(3)(c)(i) if:

The parent was a respondent in a proceeding brought under this chapter, 182 or more days have elapsed since the issuance of an initial dispositional order, and the court, by clear and convincing evidence, finds [that] . . . [t]he conditions that led to the adjudication continue to exist and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.^[1]

The conditions that led to the adjudication were respondent's failure to provide a stable and suitable environment for her daughter due to her emotional instability and the circumstances surrounding the death of her son.

At the termination hearing, a counselor who had worked with respondent testified that respondent did not complete her counseling program. The counselor reported that although respondent successfully addressed her grief and loss issues, she never overcame her anxiety and depression. Respondent admitted that she began abusing drugs to "take care of the depression and make [her] feel better." The lower court did not clearly err in finding that respondent failed to rectify her mental instability, a condition leading to adjudication, and would likely not rectify that condition in a reasonable amount of time considering the child's age.

Further, the lower court did not clearly err in finding that respondent was incapable of providing a stable and appropriate living environment for her daughter. Respondent failed to maintain consistent employment and housing. At different times throughout the proceedings, respondent lived with two boyfriends, each of whom had a criminal background, and her aunt, who assaulted her. She also spent time in jail.

Based on this evidence, the lower court did not clearly err in determining that clear and convincing evidence supported termination under MCL 712A.19b(3)(c)(i).

The court also cited § 19b(3)(c)(ii) as supporting termination. MCL 712A.19b(3)(c)(ii) permits a court to terminate parental rights if:

Other conditions exist that cause the child to come within the court's jurisdiction, the parent has received recommendations to rectify those conditions, the conditions have not been rectified by the parent after the parent has received notice and a hearing and has been given a reasonable opportunity to rectify the conditions, and there is no reasonable likelihood that the conditions will be rectified within a reasonable time considering the child's age.

In the present case, the "other condition" upon which the trial court relied was respondent's substance abuse. The facts indicate that respondent was intermittently addressing

¹ There is no dispute that 182 days or more had elapsed since the issuance of the original dispositional order.

her substance abuse issues in some manner. Nonetheless, respondent had not completed substance abuse counseling despite the significant amount of time that had passed, and although respondent had recently passed several drug screens, she had failed 17 of 27 drug screens administered throughout the course of the proceedings.

At the time of the termination hearing, the child had spent approximately 18 months in protective custody. In early October 2013, when petitioner filed its first petition to terminate parental rights, respondent was put on notice that she was not complying sufficiently with her substance abuse treatment program. Following mediation, respondent was given an additional 90 days to complete her substance abuse treatment; she failed to do so. In light of respondent's continuing substance abuse, her recent jail time associated with substance abuse, and her inability to complete her substance abuse counseling program before the termination hearing despite being given an additional 90 days to comply, the lower court did not clearly err in finding there was no reasonable likelihood respondent would fully rectify her substance abuse issues in a reasonable amount of time considering the child's age.

The lower court also did not clearly err in determining that termination was proper under MCL 712A.19b(3)(g). MCL 712A.19b(3)(g) provides that termination is appropriate when "[a] parent, without regard to intent, fails to provide proper care or custody for the child and there is no reasonable expectation that the parent will be able to provide proper care and custody within a reasonable time considering the child's age." This Court has held that proper compliance with a parent-agency agreement demonstrates an ability to provide care and custody for a child. *In re JK*, 468 Mich 202, 214; 661 NW2d 216 (2003). Conversely, however, "[a] parent's failure to participate in and benefit from a service plan is evidence that the parent will not be able to provide a child proper care and custody." *In re White*, 303 Mich App at 710.

Respondent did not substantially comply with her parent-agency treatment plan. Respondent's treatment plan required her to attend counseling sessions, to complete parenting classes, to complete substance abuse counseling, to register with Michigan Works and obtain stable employment, to submit to drug screenings, to regularly visit the minor child, and to attend all of the child's medical appointments. However, respondent stopped attending counseling and did not fully benefit from counseling services when she was attending. She had not completed her substance abuse counseling program, never provided documentation of signing up for Michigan Works despite her failure to maintain stable employment, and never completed a parenting course with MSU Extension. She also missed several parenting-time visits without good cause and failed to accompany the child to the hospital after the child broke her collarbone. The lower court did not clearly err in finding that termination was appropriate under MCL 712A.19b(3)(g).²

² Respondent also argues that the lower court clearly erred in finding that termination was proper under MCL 712A.19b(3)(j). However, the hearing transcript does not indicate that the court considered this statutory ground. At any rate, only one statutory ground need be established to support termination. *In re HRC*, 286 Mich App 444, 461; 781 NW2d 105 (2009).

III. BEST INTERESTS

Respondent argues that the lower court erred in finding that termination was in the child's best interests. We review the trial court's finding that termination was in the best interests of a child for clear error. *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Under MCL 712A.19b(5), "[i]f the court finds that there are grounds for termination of parental rights and that termination of parental rights is in the child's best interest, the court shall order termination of parental rights and order that additional efforts for reunification of the child with the parent not be made." This Court has held that the "preponderance of the evidence" standard applies to the best interests determination. *In re Moss*, 301 Mich App 76, 83; 836 NW2d 182 (2013). To determine whether termination is in the child's best interests, the court should weigh all evidence available to it. *In re Trejo*, 462 Mich at 356. The court may consider a multiplicity of factors, including "the child's bond to the parent, the parent's parenting ability, the child's need for permanency, stability, and finality, and the advantages of a foster home over the parent's home." *In re Olive/Metts*, 297 Mich App 35, 41-42; 823 NW2d 144 (2012) (citations omitted). Another factor to consider is the parent's compliance with necessary treatment plans. See, e.g., *In re AH*, 245 Mich App 77, 89; 627 NW2d 33 (2001).

The court noted that there was "some bond" between respondent and her daughter. However, the evidence showed that it would be some time, if ever, that respondent would be able to provide the child a stable home environment. Indeed, when asked whether she was ready to care for the child, respondent stated, "I would say my employment, my income is definitely questionable." Also, as previously discussed, respondent did not substantially comply with her parent-agency treatment plan. No error has been shown.

Affirmed.

/s/ William B. Murphy
/s/ Patrick M. Meter
/s/ Deborah A. Servitto